

**BASIC ORDERING AGREEMENT**

**NUMBER BOA-10661-000-2000**

**BETWEEN**

**ENTRUST TECHNOLOGIES INC.**

**AND**

**THE REGENTS OF  
THE UNIVERSITY OF CALIFORNIA  
LOS ALAMOS NATIONAL LABORATORY**

**FOR DEPARTMENT OF ENERGY  
MANAGEMENT OPERATOR ACTIVITY'S UTILIZATION**

**BOA-10661-000-2000**

**November 20, 1999**

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## BASIC ORDERING AGREEMENT

NUMBER BOA- 10661-000-2000

This Basic Ordering Agreement ("BOA" or "Agreement") between Entrust Technologies Inc. ("Entrust") and The Regents of the University of California Los Alamos National Laboratory ("University") on behalf of the Department of Energy ("DOE") and other entities having a prime contract with the DOE, is entered into to provide products and services in accordance with the following:

1. General Terms and Conditions for Commercial Items (9/98) set forth in Attachment A.
2. Software Licensing Terms and Conditions set forth in Attachment B.
3. The Products List set forth in Attachment D.
4. The Price List set forth in Attachment E.
5. Maintenance and Support Terms and Conditions set forth in Attachment G.

The parties agree that the DOE (including DOE field offices) or any entity having a prime contract with the DOE awarded pursuant to Federal Acquisition Regulation (FAR) Subpart 17.6 and Department of Energy Acquisition Regulation (DEAR) Subpart 917.60 who are listed in Attachment C and who have submitted to Entrust an executed written undertaking to be bound by the terms of this BOA (in the form of Exhibit C1 to Attachment C), may place orders under this BOA and receive the appropriate, discounted price.

Each buyer shall place its own orders under this BOA and shall be direct-billed accordingly.

WITNESS THAT:

WHEREAS, the University and Entrust agree to enter into this Basic Ordering Agreement 10661-000-2000 to cover the mutually acceptable pricing and terms and conditions of both parties only;

WHEREAS, this BOA is authorized and executed pursuant to the University's Prime Contract No. W-7405-ENG-36; and

NOW, THEREFORE, the parties agree that the entire agreement of the parties under this BOA Number BOA-10661-000-2000 shall be as follows:

### ARTICLE I: DEFINITIONS

*"Buyer"* is any Eligible Buyer who has provided Entrust with an executed written undertaking to be bound by the terms of this Agreement, in the form of Exhibit C1 to Attachment C.

*"Buyer's Representative"* is a representative of the Buyer who is authorized to execute and/or administer Orders on behalf of the Buyer.

*"Equipment or Goods"* shall mean the hardware components of Products.

*"Eligible Buyers"* are the DOE (including DOE field offices) and any entity having a prime contract with the DOE awarded pursuant to Federal Acquisition Regulation ("FAR") Subpart 17.6 and Department of Energy Acquisition Regulation ("DEAR") Subpart 917.60. Attachment C of this BOA lists the Eligible Buyers at the time that this BOA becomes effective, which may be amended from time to time by the University during the term of this BOA.

*“Order”* refers to a purchase order issued by any Buyer in accordance with the terms and conditions of this Agreement.

*“Product(s)”* shall mean any combination of Software, including documentation, licensed by Entrust.

*“Product List”* means the list of Products available for licensing at the time Entrust accepts a Buyer’s Order. Attachment D of this BOA contains the initial Product List applicable at the time that this Agreement becomes effective.

*“Price List”* means the list of Product prices applicable at the time Entrust accepts a Buyer’s Order. Attachment E of this BOA contains the initial Price List applicable at the time that this BOA becomes effective.

*“Software”* shall mean each software program or products, in machine readable, object, printed or interpreted form provided on various formats.

## **ARTICLE II: TERMS AND CONDITIONS**

Terms and conditions of BOA-10661-000-2000 consist of all Articles, Attachments and Exhibits contained herein.

Any purchase order pursuant to the BOA shall be in accordance with the terms and conditions of the Basic Ordering Agreement.

If any conflict exists between the terms and conditions of this BOA Number BOA-10661-000-2000, the following enumerated order of precedence shall apply:

1. The Order.
2. Site-Specific Terms and Conditions attached to any Order and agreed to by Entrust.
3. The Articles of this BOA Number BOA-10661-000-2000.
4. Software Licensing Terms and Conditions set forth in Attachment B.
5. General Terms and Conditions for Commercial Items (9/98) set forth in Attachment A.
6. All other Exhibits or Attachments of the BOA.

## **ARTICLE III: STATEMENT OF WORK**

- A. This Basic Ordering Agreement establishes basic terms and conditions of this nonexclusive BOA, to govern Orders from any Buyer for any Products described herein.
- B. The geographic scope of this Agreement is the forty-eight (48) contiguous states, the District of Columbia, Alaska, Hawaii and the U.S. territories.
- C. Products listed in Article VI below are covered in this Agreement. All Orders issued under shall bear the purchase order release number and reference this BOA.
- D. This Agreement does not obligate Entrust to sell, license or provide temporary use of Product, or provide service, nor obligate the University to acquire any Product or service.

- E. Entrust shall not commence performance against any Order unless issued by a Buyer's Representative.

#### **ARTICLE IV: TERM OF BOA**

The term of this BOA for issuance of Orders shall be for a five (5) year period from the effective date of this contract to September 30, 2004.

#### **ARTICLE V: END USER CERTIFICATION**

The University and Buyers agree that licenses and services purchased under this BOA are intended for the Buyer's use in accordance with their prime contract with the Department of Energy.

#### **ARTICLE VI: PRODUCTS, PRICING, DISCOUNTS AND MAINTENANCE**

##### **A. Products**

1. Each Buyer shall be entitled to license the Products listed in the Product List.
2. All Products provided under this BOA are licensed to the Buyer pursuant to the Software Licensing Terms and Conditions set forth in Attachment B.

##### **B. Pricing**

1. Each Buyer shall be entitled to license Products at the prices listed in the Price List, less the discount amount, if any, specified in Attachment F. Unless otherwise stated, each price excludes all applicable federal, state, provincial and local taxes (other than taxes on Entrust's net income) and the costs relating to the delivery of each item of Software. Buyer shall pay Entrust the amount of any such tax or additional costs.
2. The price on the Order shall be determined by using the Price List prevailing at the time Entrust accepts the Buyer's order.
3. With respect to this BOA, additions, deletions, changes or updates to the Product List and Price List will affect this BOA as follows:
  - a. When new products are introduced by Entrust, the Product List and Price List may be modified by Entrust as necessary to incorporate the new products and the associated prices, subject to negotiation of additional software licensing terms and conditions, if applicable.
  - b. Entrust may change the Price List on an annual basis. Any changes to the Price List which are not associated with the introduction of new products will be provided by Entrust to the University's Buyer Representative for review on or before January 31<sup>st</sup> of each year. Such changes to the Price List may be effective immediately, at the discretion of the University's Buyer Representative, but shall be effective no later than April 1<sup>st</sup> of such year.

##### **C. Discounts**

1. Attachment F contains a description of the discounts offered under this BOA.

2. The license fee for each Product for each Order placed under this BOA will be calculated based on the Price List less the discount amount, if any, as outlined in Attachment F.

**D. Maintenance**

1. Buyers may purchase maintenance and support services from Entrust on an annual basis, which services will be provided pursuant to the Maintenance and Support Terms and Conditions set forth in Attachment G.
2. Maintenance and support fees will be based on the total, actual purchase price of licenses for all Entrust products licensed by the Buyer, under this agreement and any prior purchases by the Buyer.
3. There is no maintenance and support fee for Web Certificates, VPN Certificates, CBTs, documentation, training or other Entrust professional services.
4. Once a Buyer purchases maintenance and support services as provided for in this BOA, the annual support and maintenance fee will include products licensed to Buyer prior to this Agreement as well as Products purchased under this BOA.

**E. Professional Services**

1. Buyer may purchase professional services from Entrust, which services shall be provided in accordance with the terms and conditions of a mutually acceptable agreement for professional services signed between Buyer and Entrust.
2. Fees for such professional services shall be in accordance with the Price List in effect at the time of purchase of such services.

**ARTICLE VII: SHIPPING AND BILLING INSTRUCTIONS**

- A. Entrust shall ship in accordance with standard commercial practices to the shipping location specified in each Order. The Order number must be clearly marked on the outside of each package. All Products ordered against a Order shall be shipped exclusively against that Order and shall not be intermingled with other Orders. Each shipment shall contain an itemized packing list and shall reference the Order number.
- B. Invoices shall be submitted to the Buyer for payment by mailing to the address specified in the Buyer's Order.
- C. All invoices must reference the Order number for which payment is being requested. Payment shall be Net 30 days. The Net 30 days shall calculated based on the latter of the following: a) the date of Buyer's Order; b) the date of Entrust's invoice; and c) the documented date of receipt of Product by the Buyer.
- D. The F.O.B. point for all Product licenses purchased under this Agreement within the forty-eight (48) contiguous states and the District of Columbia is F.O.B. Destination. Products purchased within Hawaii, Alaska and the U.S. territories are F.O.B. Destination.
- E. Prices include standard commercial packing. Any special packing requirements must be negotiated with Entrust in advance of placing any orders.

- F. The Buyer may, at its option and expense, elect to have the shipment made via air or express delivery directly from Entrust. Instructions for such activity shall be identified on the Buyer's purchase order.

## **ARTICLE VIII: SITE-SPECIFIC TERMS AND CONDITIONS**

Entrust acknowledges that the Buyer may have requirements unique to its site, mission, and/or geographic location. Therefore, Entrust agrees that the Buyer may seek to incorporate its own Site-Specific Terms & Conditions relative to Environmental Safety and Health considerations as well as FAR, DEAR, or other applicable regulations and laws. Such Site-Specific Terms and Conditions must be agreed to by Entrust.

## **ARTICLE IX: ORDERS**

- A. The Eligible Buyers intend to purchase licenses for various quantities of Products during the term of this BOA. This information is offered as a basis of obtaining the best possible pricing and discounts during the term of the BOA; however, it is understood that no guarantee or warranty is made or implied that any Order for a specific quantity will be issued under this BOA, nor is any guarantee or warranty made that any Orders will be issued.
- B. Entrust shall deliver the Products ordered within ten (10) days after receipt and acceptance of an Order by Entrust. Each Order shall:
1. Be initiated by a Buyer's Representative.
  2. Be placed for delivery within the geographic scope of this Agreement,
  3. Reference this Agreement by an explicit statement on the face of the order such as "Governed by the terms and conditions of Basic Ordering Agreement No. 10661-000-2000",
  4. Comply with any minimum order quantity identified in this Agreement.
- C. Entrust shall deliver to Buyer one (1) master copy of each item of Software. Thereafter Buyer shall be responsible for and bear all expenses (including taxes) related to making the permitted number of copies and distributing them within Buyer's organization. Buyer will be the importer of record for the Software.
- D. Orders for Product under this BOA will be governed by the terms and conditions of this Agreement. Any new or conflicting terms and conditions on an Order shall have no effect, unless agreed to in writing by Entrust.

## **ARTICLE X: AMENDMENTS TO TERMS AND CONDITIONS**

Amendment to Attachment A, Exhibit A1, BASIC ORDERING AGREEMENT GENERAL TERMS AND CONDITIONS FOR COMMERCIAL ITEMS, DOE CONTRACTORS (10/96) are as follows:

- A. Clause 2 is hereby deleted in its entirety.
- B. Clause 3 is hereby deleted and replaced with the following:

### **"3. TITLE AND ADMINISTRATION**

All Software, including any related copyright, trade-mark, trade secret, and patent rights are owned by Seller or its third-party licensors and will remain the sole and exclusive property of Seller and its third-party licensors. Company shall make payments under Orders from funds advanced by the Government and agreed to be advanced by DOE, and not from its own assets. The BOA and Orders may be assigned by the Company to DOE or its designee, provided written notice of such assignment is given to Seller, and such assignee has provided Seller with an undertaking to be bound by the terms of this Agreement. In the case of such transfer, Company shall have no further responsibilities hereunder."

- C. Clause 5 Warranty is hereby deleted and replaced with the following:

**"5. WARRANTY**

Seller warrants the Software in accordance with Software Licensing Terms and Conditions set forth in Attachment B of the BOA."

- D. Clause 6 is hereby deleted and replaced with the following:

**"6. ASSIGNMENT**

Seller shall not assign rights or obligations to third parties without the prior written consent of Company, however Seller may assign this Agreement, in whole or in part, to an affiliate or to any party which acquires all or substantially all of its related business by merger, sale of assets, or otherwise, without the consent but upon notice to Company. Seller may use one or more of its subsidiaries to perform its obligations under this Agreement, provided that such use will not affect Seller's obligations hereunder. Seller may assign rights to be paid amounts due or to become due to a financing institution if Company is promptly furnished written notice and a signed copy of such assignment. Payments to an assignee shall be subject to set off or recoupment for any present or future claims of Company against Seller."

- E. The first sentence of Subclause (b) of Clause 12 is hereby deleted in its entirety.

**ARTICLE XI: ADMINISTRATION AND NOTICES**

- A. All Notices for general content of this Basic Ordering Agreement shall be made to the University's Buyer Representative who are representing the various Buyers for managing the terms and conditions of the Agreement.

- B. All notices in "A" above shall be sent to the following address:

University of California  
Los Alamos National Laboratory  
P. O. Box 1663, MAIL STOP D442  
Los Alamos, NM 87545  
ATTN: [Pia Grieger, Purchasing](#)

- C. All notices in "A" above shall be sent to Entrust at the following address:



Entrust Technologies Limited  
750 Heron Road  
Ottawa, ON  
K1V 1A7  
CANADA  
ATTN: Sonya Parker

- D. All notices that pertain to unique, Buyer specific requirements (Non BOA administrative) shall be addressed to the Buyer's Representative identified on the Order in question.
- E. All notices must be in writing and delivered either in person or by certified or registered mail, return receipt requested, or via electronic communication with confirmation of receipt, to the designated person at the address specified below. Such notice will be effective upon receipt.
- F. Buyers may request copies of Attachments for Products, pricing, and discounts contained in this BOA by contacting:

NAME	PHONE	EMAIL
Mike McLaughlin	(703) 269-2047	<a href="mailto:Mike.McLaughlin@entrust.com">Mike.McLaughlin@entrust.com</a>

## ARTICLE XII: ENTIRETY OF AGREEMENT

This BOA and all attachments and exhibits shall constitute the entire agreement concerning the BOA and shall supersede all agreements, either oral or written, of the parties concerning the matters referred to herein. Any provisions of the BOA found to be prohibitive by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this BOA.

## ARTICLE XIII: GENERAL

- A. No modification to this Agreement will be binding, unless in writing and signed by an authorized representative of Entrust and an authorized representative of the University of California who are managing the terms and conditions of this BOA.
- B. In the event that any portion of this Agreement shall be held unenforceable, the remaining portions of this Agreement shall remain in full force and effect.
- C. The laws of the state in which the order was issued shall apply.
- D. Upon any termination or expiration of this Agreement, all rights, obligations and licenses granted to the Buyer under this Agreement shall immediately cease and terminate with the exception of those rights and obligations which by their nature should survive.
- E. Entrust acknowledges that representation by the Regents of the University of California is a limited representation and does not establish any liability or warranty between the Regents of the University of California and Entrust under the Agreement unless specific Buyer of the University of California sign the written undertaking.

IN WITNESS WHEREOF, the parties hereto have executed this Basic Order Agreement Number 10661-000-2000.

**AUTHORIZED: THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**

By: \_\_\_\_\_

Name: John J. Hernandez  
(Printed)

Title: ADP Contracts Team Leader

Date: \_\_\_\_\_

**ACCEPTED: ENTRUST TECHNOLOGIES INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(Printed)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT A: BASIC ORDERING  
AGREEMENT GENERAL TERMS AND  
CONDITIONS FOR COMMERCIAL ITEMS (9/98)**

**1. DEFINITIONS**

The following terms shall have the meanings below:

- (a) Government means the United States of America and includes the U.S. Department of Energy (DOE) or any duly authorized representative thereof.
- (b) Seller means the person or organization that has entered into this Basic Ordering Agreement (BOA).
- (c) Company means any DOE Contractor utilizing the BOA.
- (d) Item includes "commercial item" and "commercial component", as defined in FAR 52.202-1.
- (e) Order means individual requests for Items issued under this BOA.
- (f) Subcontract Administrator means Company's cognizant procurement representative
- (g) Site Specific Terms and Conditions means those unique requirements of the Company issuing Orders under this BOA which will supplement the general terms and conditions.

**2. ORDER OF PRECEDENCE**

Any inconsistencies shall be resolved in accordance with the following descending order of precedence: (1) item description, (2) face of the Order, (3) Site Specific Terms and Conditions, (4) face of the BOA, and (5) general terms and conditions.

**3. TITLE AND ADMINISTRATION**

All property rights and interests resulting from this Orders shall pass directly from Seller to the Government. Company shall make payments under Orders from funds advanced by the Government and agreed to be advanced by DOE, and not from its own assets. The BOA and Orders may be assigned by the Company to DOE or its designee, and in case of such transfer and notice thereof to Seller, Company shall have no further responsibilities hereunder.

**4. ACCEPTANCE OF TERMS AND CONDITIONS**

Seller, by signing the BOA or Orders or delivering the items identified therein, agrees to comply with all the terms and conditions and all specifications and other documents that this BOA or Order incorporates by reference or attachment. Company hereby objects to any terms and conditions contained in any acknowledgment of the BOA or Order that are different from or in addition to those mentioned in this document. Failure of Company to enforce any of the provisions of the BOA or Order shall not be construed as evidence to interpret the requirements of the BOA or Order, nor a waiver of any requirement, nor of the right of Company to enforce each and every provision. All rights and obligations shall survive final performance of the BOA or any Orders thereunder or any Order thereunder.

**5. WARRANTY**

Seller expressly warrants that items delivered under the Orders shall be in accordance with Seller's affirmation, description, sample, or model and compliant with all requirements of the

BOA and Order. The warranty shall begin upon acceptance and extend for a period of (1) the manufacturer's warranty period or six months, whichever is longer, if Seller is not the manufacturer and has not modified the item or (2) one year or the manufacturer's warranty period, whichever is longer, if Seller is the manufacture, of the item or has modified it. If any nonconformity with item appears within that time, Seller shall promptly repair or replace such items or reperform services. Transportation of replacement items and return of nonconforming items and repeat performance of services shall be at Seller's expense. If repair or replacement or reperformance of services is not timely, Company may elect to return the nonconforming items or repair or replace them or reprocur the services at Seller's expense. Any implied warranty of merchantability or fitness for a particular purpose is hereby disclaimed.

## **6. ASSIGNMENT**

Seller shall not assign rights or obligations to third parties without the prior written consent of Company. However, Seller may assign rights to be paid amounts due or to become due to a financing institution if Company is promptly furnished written notice and a signed copy of such assignment. Payments to an assignee shall be subject to set off or recoupment for any present or future claims of Company against Seller.

## **7. NEW MATERIALS**

Unless otherwise specified in the BOA or Order, all items delivered shall consist of new materials. New is defined as previously unused which may include residual inventory or unused former Government surplus property. This does not include the use of recycled or recovered material as defined by the Environmental Protection Agency in 40 CFR 247.

## **8. TRANSPORTATION**

Transportation shall be "FOB Origin" unless specified otherwise in the Order and no insurance cost shall be allowed unless authorized in writing on the specific Order and the bill of landing shall indicate that the transportation is for the Government and is subject to the standard Government bill of lading terms and any special rates or charges.

## **9. RISK OF LOSS**

Where Company is liable to Seller for loss of conforming items occurring after the risk of loss has passed to Company, Company shall pay Seller the lesser of (1) the agreed price of such items, or (2) Seller's cost of replacing such items. Such loss shall entitle Seller to an equitable extension in delivery schedule obligations.

## **10. PAYMENT**

Unless otherwise provided, terms of payment shall be net 30 days from the latter of (1) receipt of Seller's proper invoice, if required, or (2) delivery of items/completion of work. Any offered discount shall be taken if payment is made within the discount period that Seller indicates. Payments may be made either by check or electronic funds transfer, at the option of Company. Payment shall be deemed to have been made as of the date of mailing or the date on which an electronic funds transfer was made. Notwithstanding anything therein, the Company shall be entitled at any and all times to set off against any amounts payable by the Company hereunder any amount owing from Seller to the Company under Orders or any subcontracts with Seller.

## **11. COMPLIANCE WITH LAWS**

Seller shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, and regulations and such compliance shall be a material requirement of the BOA. Seller warrants that each chemical substance constituting or contained in items furnished is on the list of substances published by the Administrator of the Environmental Protection Administration pursuant to the Toxic Substances Control Act as amended. With each delivery Seller shall provide Company any applicable Material Safety Data Sheet as required by the Occupational Safety and Health Act and applicable regulations including, without exception 29 CFR 1910.1200.

## **12. TERMINATION FOR CAUSE**

(a) The Company may terminate the BOA or any Orders for cause, in whole or in part, if the Seller fails to comply with any of the terms of the BOA or any Orders, or fails to provide adequate assurance of future performance. In that event, the Company shall not be liable for any amount for items not accepted. (b) If the BOA or any Order is terminated for cause, the Company may require Seller to deliver to the Company any supplies and materials, manufacturing materials, and manufacturing drawings that Seller has specifically produced or acquired for the terminated portion of the BOA or Order. The Company shall pay the agreed-upon price for completed items delivered and accepted. The Company and Seller shall agree on the amount of payment for all other deliverables. (c) Seller shall not be liable to Company for delays in performance occasioned by causes beyond Seller's reasonable control and without its fault or negligence. (d) The rights and remedies of the Company in this clause are in addition to any other rights and remedies provided by law or under the BOA.

## **13. BANKRUPTCY**

If Seller enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the Subcontract Administrator within five days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the BOA and Order numbers for which final payment has not been made.

## **14. TAXES**

Taxes shall be collected and paid in accordance with the Site Specific Terms and Conditions of the respective Order.

## **15. CHANGES**

(a) The Company reserves the right to make changes within the general scope of the BOA and any Order by issuance of a unilateral change order, or by a bilateral modification to the BOA or any Order. Such changes may include, without limitation, changes in (1) the description of the items; (2) the quantities of items ordered; (3) the method of shipment or packaging, and (4) the time or place of delivery, inspection, or acceptance. The Seller shall promptly comply with any such change made by the Company. If any change affects the cost of or the time required for performance, an equitable adjustment to the price and/or delivery requirements and other affected provisions of the BOA or any Order shall be made by the parties in a bilateral modification. Any claim for adjustment by Seller must be made within 30 days from the date of receipt of Company's change notice, although Company in its sole discretion may receive and act upon any claim for adjustment at any time before final payment. (b) Only the Subcontract Administrator is authorized on behalf of Company to issue changes whether formal or informal. If Seller considers that any direction or instruction by Company personnel constitutes such a

change. Seller shall not rely upon such instruction or direction without written confirmation from the Subcontract Administrator. Nothing in this clause, including any disagreement with Company about the equitable adjustment, shall excuse Seller from proceeding with the agreement as changed.

#### **16. TERMINATION FOR CONVENIENCE**

The Company may, in its sole discretion, terminate the BOA or any Order, or may terminate the fabrication of all or any portion of the items not then completed, at any time, by giving the Seller a written notice of termination. Upon receipt of a notice of termination, the Seller shall, unless the notice requires otherwise, discontinue all performance on the date and to the extent specified in the notice, and shall otherwise minimize costs to the Company. Payment for items already completed or in the process of completion, shall be adjusted between the Seller and the Company in a fair and reasonable manner, but such payment shall exclude any allowance for the uncompleted portion of the items, or any anticipated profits thereon. Such payment for items already completed or in the process of completion shall be the total compensation due to the Seller for termination at will by the Company.

#### **17. SUSPENSION**

The Company may, for any reason, direct the Seller to suspend performance of any part of or all of the performance of the BOA or any Order for an indefinite period of time. If any such suspension significantly delays the progress of or causes the Seller additional direct expenses in the performance of the BOA or any Order, not due to the fault or negligence of the Seller, the compensation to the Seller shall be adjusted by a modification to the BOA or any Order and the time of performance shall be extended by the actual duration of the suspension. Any claim by the Seller for compensation of a schedule extension must be supported by an appropriate document asserted within ten (10) days from the date an order is given to the Seller to resume the performance of the BOA or any Order.

#### **18. INCORPORATION BY REFERENCE**

The BOA incorporates certain clauses by reference. These clauses apply as if they were incorporated in their entirety. For Federal Acquisition Regulation (FAR) provisions incorporated by reference, "Contractor" means Seller and "Contracting Officer" means the Company Subcontract Administrator. The FAR clauses may be obtained from the Company upon request. The following clauses are incorporated by reference:

FAR 52.222-26 Equal Opportunity

FAR 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans

FAR 52.222-36 Affirmative Action for Handicapped Workers

#### **19. YEAR 2000 WARRANTY - COMMERCIAL SUPPLY ITEMS**

The Seller warrants that each hardware, software, and firmware product delivered under this agreement shall be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty first centuries, and the years 1999 and 2000 and leap year calculations to the extent that other information technology, used in combination with this information technology being acquired, properly exchanges date/time data with it. If the agreement requires that specific listed products must perform as a system in accordance with the foregoing warranty, then that warranty shall

apply to those listed products as a system. The duration of this warranty and the remedies available to the Government for breach of this warranty shall be as defined in, and subject to, the terms and limitations of the Seller's standard commercial warranty or warranties contained in this agreement, provided that notwithstanding any provisions to the contrary in such commercial warranty or warranties, the remedies available to the Government under this warranty shall include repair or replacement of any listed product whose non-compliance is discovered and made known to the Seller in writing within ninety (90) days after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies the Government may otherwise have under this agreement with respect to defects other than Year 2000 performance.

## **ATTACHMENT B: SOFTWARE LICENSING TERMS AND CONDITIONS**

**1. Grant Of License:** Subject to the terms and conditions of this license agreement Entrust hereby grants to Buyer the non-exclusive, non-transferable right to use the number of copies specified in any Order of the Entrust software programs and associated documentation (the "Software") listed in Attachment D to the BOA.

**2. Title:** The Software is owned by Entrust and its suppliers and will remain the sole and exclusive property of Entrust and its suppliers including any related copyright, trademark, and patent rights therein.

**3. Restricted Use:** A license for any desktop Software program is a license to use that Software with one User Identity or Certificate. Buyer may use each permitted copy of the desktop Software programs with the number of applications specified in the Order. If a number of applications has not been specified in the Order, then the number of applications shall be deemed to be one (1). In the event the Buyer obtains User Identities under this Agreement which (i) have been bundled together with a specific item of Software, or (ii) are authorized for use with a specific number of Applications, in the case of a single Application, referred to as a Single Application Bundle (SAB), such User Identities shall be restricted for use only with Software with which such User Identities were bundled or with the number of Applications for which such User Identities were authorized. In this context an "Application" shall mean a single software product from a single vendor used by an individual or device which performs a single function such as word processing or electronic mail. For greater certainty, a utility suite or multi-function program shall be considered to consist of multiple Applications.

In the event that Buyer purchases a license for i500 Directory software at the Entrust/Web Connector i500 directory entry price, Buyer shall only be entitled to store web certificates and any additional information required for the storage and/or retrieval of the web certificates in the directory entries for the i500 Directory. No other object, object class or name binding can be stored in those directory entries. Should Buyer wish to store other objects, object classes or name bindings in those directory entries, Buyer must pay to obtain an upgrade to a full i500 Enterprise Directory.

A "User Identity" is set of cryptographic keys that allow a user to protect data and that are recognized and certified by the Entrust/Authority software program.

A "Certificate License" means a right to use a certificate issued by Entrust/Authority (or any connector add-on to Entrust/Authority, such as Entrust/Web Connector or Entrust/VPN Connector). The maximum number of digital certificates issued by Entrust/Authority is set by a Licensing String. The maximum number of Certificate Licenses used by the Buyer is limited to those acquired by the Buyer under this Agreement (or any Order). Certificate Licenses may be time limited. A Certificate License which expires may not be renewed, rather a new Certificate License must be issued. Once a Certificate License is issued, it may not be altered or redeployed.

A User Identity or Certificate License may not be assigned to more than one individual user, server or network node.

Buyer shall not modify, enhance, adapt or translate the Software. Buyer shall not reverse engineer, de-compile or disassemble the Software or use software to trace the operation of the Software. Buyer shall not distribute, lease, rent, grant a security interest in, assign or otherwise



transfer the Software. Buyer shall not use the Software to provide trusted third party cryptographic services. Any third party software included as part of the Software may be used only with the Software, unless otherwise authorized in writing by Entrust.

This subparagraph shall apply only if Buyer is licensing the Entrust Enterprise Desktop Suite or Entrust/Access. The third party products included in the Entrust Enterprise Desktop Suite and Entrust/Access shall be licensed to Buyer pursuant to the terms and conditions of their respective manufacturer's "shrink wrap" licenses.

**4. Restricted Copies:** The Software may be copied to the extent of the number specified in any Order. Buyer may also make an additional copy only for back-up or archival reasons for each computer on which the Software is installed. Buyer may copy the associated documentation to the extent of the number of copies specified above for the related item of Software. Buyer must be able to provide evidence to Entrust of the number and location of all copies of the Software. Buyer will include all applicable proprietary rights notices on all such permitted copies of the Software in the same manner as such notices appear on the original copy of the Software provided to Buyer.

**4a. Software Distribution Rights.** The Buyer may distribute the Software listed under the heading "Desktop Applications" in Attachment D hereto, Entrust/Entelligence, User Identities and Certificate Licenses (collectively, the "Desktop Applications") to third parties, provided, however, that: (i) such Desktop Applications are provided to a third party primarily for the purpose of conducting business with the Buyer; (ii) Entrust Technologies is identified as the source of the Desktop Applications; and (iii) the Desktop Applications are licensed to third parties pursuant to the terms and conditions of the shrinkwrap agreement embedded in or included with the Desktop Applications. Each User Identity, Certificate License or copy of Desktop Application provided to a third party pursuant to this distribution right shall count as a User Identity, Certificate License or copy of Desktop Application granted or licensed hereunder, as the case may be.

**5. Licensing Strings:** The maximum number of User Identities and Certificates recognized by an Entrust/Authority software program is set by a series of computer-generated characters referred to as a "Licensing String". A Licensing String may only be used with the copy of Entrust/Authority for which it is provided. A Licensing String may not be copied or altered by a Buyer. If a Buyer's Order for additional User Licenses or Certificates for previously licensed Software is accepted, a new Licensing String increasing the maximum number of User Identities or Certificates, will be delivered to Buyer. Upon receipt of a new Licensing String, Buyer shall stop using and destroy the prior existing Licensing String for that Software.

**6. Acceptance:** Buyer shall have 30 days from the date of delivery to verify the successful installation of an item of Software and to verify that the item of Software performs materially in accordance with the accompanying user guides. If Buyer reasonably determines that an item of Software cannot be installed or does not so perform, Buyer may return the item for a refund. However, if an item Software is not returned within 30 days hereof it shall be deemed accepted. Notwithstanding the foregoing, if Buyer has licensed previously an item of Software pursuant to an evaluation agreement, it shall be deemed to have accepted the Software as of the date of delivery.

**7. Limited Warranty:** Entrust warrants that the Software: (a) will perform in substantial accordance with the accompanying user documentation for a period of 90 days from the date of receipt (except if failure of the Software is a result of accident, misuse, abuse, improper

operation or any other cause external to the Software), and (b) at the time of delivery, Entrust shall have used commercially reasonable efforts to cause the Software to be free of any known computer virus or harmful, malicious, or hidden program, data, or other computer instructions whose purpose is to disrupt, damage or interfere with the use of computer and telecommunications software or hardware for their normal purposes.

Entrust's sole and exclusive liability and Buyer's sole and exclusive remedy for breach of the provisions of this section 7 shall be, at Entrust's sole option, either to (a) take return of the Software and refund the price paid for the Software, or (b) repair or replace the Software that does not meet Entrust's warranty and which is returned to Entrust. Any replacement Software shall be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. Upon expiry of the warranty period, the Software shall be deemed accepted.

**8. Year 2000 Warranty:** Entrust warrants that the Software will perform date and time dependent operations between December 31, 1999 and January 1, 2000, without any material, service affecting non-conformances to the accompanying user documentation. Entrust does not, however, warrant that the Software will be free of all defects, errors or inaccuracies. Entrust shall not be responsible for any defects, errors or inaccuracies in the Software that result from the provision to the Software of inaccurate, incompatible, or incorrect time or date data by the other programs, the underlying operating system, firmware or hardware. This year 2000 warranty shall terminate on June 30, 2000. Entrust's sole and exclusive liability and Buyer's sole and exclusive remedy for breach of the provisions of this section 8 shall be for Entrust to repair or replace the affected Software.

**9. Intellectual Property Indemnity:** Entrust warrants that it has the right to grant the licenses provided herein. As Entrust's sole liability and the Buyer's exclusive remedy under this warranty, Entrust shall defend the Buyer against any suits, claim or proceeding alleging that any portion of the Software directly infringes any copyright, trademark, trade secret, patent or other proprietary right ( a "Claim") and satisfy any final awards for infringement under a claim, provided that the Buyer gives Entrust: (a) prompt notice in writing of each Claim received by the Buyer, and (b) the right to control and direct the investigation, defense and settlement of each Claim.

If an injunction is obtained preventing the Buyer from using the Software in whole or in part, as a result of a Claim, Entrust, at its sole option, may, if commercially viable for Entrust: (a) procure for Buyer the right to continue using the Software; (b) replace or modify the same with equivalent or better Software so that Buyer's use is not subject to any such injunction; (c) if the Buyer has purchased this license, pay to Buyer the lesser of (i) 50 % of the purchase price of the affected portion of the Software, and (ii) the undepreciated capital cost of the affected portion of the Software carried on the Buyer's books at the time of such claim less any outstanding monies owing on such Software; or (d) if the Buyer has acquired this license as a part of a service (i.e., the license is not purchased), pay to Buyer for the loss of use of the Software \$10 for each User License acquired within 2 years prior to the date of the commencement of the injunction.

Entrust shall have no liability to the Buyer in respect of any Software, including the use thereof, in the event such Software: (a) is used by Buyer in a manner or for a purpose other than that for which it was supplied, as contemplated by Entrust's published documentation therefor; or (b) is used by Buyer in combination with other products not provided by Entrust and the infringement arises from such combination or the use thereof.

The provisions of this Section state the sole and exclusive liability of Entrust and its suppliers, and the sole and exclusive remedy of the Buyer, with respect to any Claim of the nature described herein.

**10. NO OTHER WARRANTIES:** ENTRUST DISCLAIMS ALL WARRANTIES, CONDITIONS AND REMEDIES (EXCEPT AS SET FORTH IN SECTIONS 7, 8 AND 9), EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE AND THE ACCOMPANYING DOCUMENTATION.

**11. Limit of Liability:** ENTRUST, ITS EMPLOYEES AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS) WHETHER ARISING FROM CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY. IN NO EVENT SHALL ENTRUST'S TOTAL CUMULATIVE LIABILITY PURSUANT TO THIS AGREEMENT EXCEED THE LICENSE FEES PAID BY BUYER TO ENTRUST HEREUNDER.

**12. Confidentiality:** "Confidential Information" is any business, marketing, technical, scientific or other information disclosed by Entrust which, at the time of disclosure is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Buyer acknowledges that the Software (and any information incorporated therein or related thereto) is Confidential Information of Entrust. Confidential Information shall be retained in confidence by Buyer and shall be used, disclosed, and copied solely for the purposes of, and in accordance with, this Agreement. Buyer shall only disclose Confidential Information to those employees of Buyer with a need to know such Confidential Information. Buyer shall use the same degree of care as it uses to protect its own confidential information of a similar nature, but no less than reasonable care, to prevent the unauthorized use, disclosure or publication of the Confidential Information. Buyer shall not be bound by any obligations restricting disclosure and use set forth in this Agreement with respect to Confidential Information, or any part thereof, which (i) was known to Buyer prior to disclosure, (ii) was lawfully in the public domain prior to its disclosure, or becomes publicly available other than through a breach of this Agreement, (iii) was disclosed to Buyer by a third party, provided that such third party is not in breach of any confidentiality obligation in respect of such information. If Buyer is compelled pursuant to legal, judicial, or administrative proceedings, or otherwise required by law, to disclose Confidential Information of Entrust, Buyer shall use reasonable efforts to (i) seek confidential treatment for such Confidential Information, and (ii) provide prior notice to Entrust to allow Entrust to seek protective or other court orders.

**13. Audit Rights:** Buyer shall keep reasonable, proper records relating to the number and location of all copies of each item of Software made or in use and the number of Applications used in conjunction with the desktop Software programs. A certified accountant selected by Entrust, may, upon reasonable notice, during normal business hours, but no more often than once a year, inspect the records of Buyer as is necessary to certify the number of copies made or in use during the term of this Agreement

**14. U.S. Government End Users:** The Software is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (JAN 1998), consisting of "commercial computer software" and "commercial

computer software documentation", as such terms are used in 48 C.F.R. 12.212 (SEPT 1995), and is provided to the U.S. Government only as a commercial end item. Government end users acquire the rights set out in this Agreement for the Software consistent with: (i) for acquisition by or on behalf of civilian agencies, the terms set forth in 48 C.F.R. 12.212 (SEPT 1995); or (ii) for acquisition by or on behalf of units of the Department of Defense, the terms set forth in 48 C.F.R. 227.7202.

**15. Export Restrictions:** The Software and related information are subject to export and import restrictions. Buyer shall comply with all applicable export laws and regulations and any applicable import laws and regulations as they apply to the Software and any other materials or information provided by Entrust. Buyer shall be responsible for procuring all required permissions for any subsequent export, import or use of the Software or related information.

**16. Termination:** Entrust may terminate this Agreement without notice if Buyer: (a) assigns or attempts to assign this Agreement or any of Buyer's rights hereunder to a third party, except as permitted in this Agreement; or (b) neglects or fails to perform or observe, or correct a breach of, its obligations to Entrust; or (c) files a bankruptcy petition or has such a petition filed involuntarily against it, becomes insolvent, makes an assignment for the benefit of creditors, consents to the appointment of a trustee, or if bankruptcy reorganization or insolvency proceedings are instituted by or against Buyer.

In the event of such termination by Entrust under this Section 16, Buyer shall either destroy the Software and all copies thereof or return immediately the Software and all copies thereof to Entrust. Entrust's right to terminate hereunder shall be in addition to any other rights which Entrust may have at law or in equity.

**17. Waiver:** The failure of Entrust to claim a breach of any term of this Agreement shall not constitute a waiver of such breach or the right of Entrust to enforce any subsequent breach of such term.

**18. Survival:** Sections 2, 7, 9, 10, 11, and 18 of this Attachment A shall survive the termination of this Agreement. Section 12 shall specifically survive for a period of five (5) years from the termination of this Agreement.

## **ATTACHMENT C: LIST OF ELIGIBLE BUYERS**

### **EXHIBIT C1:**

#### **FORM OF BUYER UNDERTAKING TO ACCEPT THE TERMS AND CONDITIONS OF BASIC ORDERING AGREEMENT NUMBER BOA-10661- 000-2000**

\_\_\_\_\_, a DOE Contractor identified in Attachment C of Basic  
Ordering Agreement Number \_\_\_\_\_, has read and understood the Agreement and

Basic Ordering Agreement No. 10661-000-2000

Between Entrust Technologies and

The Los Alamos National Laboratory

November-99

desires to place Orders for licenses for Products and services pursuant to the Agreement, and agrees that:

1. The Agreement represents the exclusive terms and conditions for obtaining licenses for Products and ordering services under the Agreement;
2. All orders placed under the Agreement must be pursuant to a written Order accepted by Entrust Technologies Inc;
3. The Buyer understands and acknowledges that the Regents of the University of California are representing Buyer only in managing the terms and conditions of the Agreement and that no other agency or relationship is created under this Agreement.
4. The Buyer is under no obligation to purchase licenses for Products or order services under the terms and conditions of this Agreement;
5. Except for authorized joint programs between the Buyer and other Government agencies, the Buyer may not use this Agreement to obtain licenses for Products or order Services, on behalf of locations not included as Eligible Buyers in Attachment C of this Agreement;

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

The Buyer acknowledges that he has read and understands this Agreement and consents to be bound by its terms.

BY: \_\_\_\_\_

PRINTED NAME AND TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DOE LAB NAME: \_\_\_\_\_

DOE CONTRACTOR: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTRACT ADMINISTRATOR: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

## **ATTACHMENT D: PRODUCTS**

### **Infrastructure**

Entrust/Authority <sup>1, 2</sup>

Entrust/Directory

Notes:

<sup>1</sup> The Entrust/Authority includes the Entrust/Admin. With a license to the Entrust/Authority, the buyer has the right to install the Entrust Authority 1 time and the Entrust/Admin an unlimited number of times.

<sup>2</sup> If additional licenses of the Entrust/PKI are needed for a lab environment or for migration/upgrade testing, these must be licensed from Entrust.

### **Connectors and Servers**

Entrust/Web Connector

Entrust/VPN Connector

Entrust/Direct Server

Entrust/Access Server

Entrust/Commerce Connector

### **Entrust User Identity**

User Identity (Multi-Application)

User Identity (Single Application)

### **Desktop Applications**

Entrust/Access

Entrust /Direct

Entrust/Unity

Entrust/ICE

Entrust/Express

Entrust/Solo

NOTE: Desktop Applications (excluding Entrust/Solo) require a license for a Multi-Application User Identity in addition to a license for the Desktop Application.

### **Single Application Bundles (SAB)**

Entrust/Access

Entrust /Direct

Entrust/Unity

Entrust/ICE

Entrust/Express

NOTE: SABs combines a Desktop Application and a Single Application User Identity. A User Identity supplied with an SAB may not be used with any other Desktop Application.

### **Certificate Licenses**

VPN Certificates (requires VPN Connector)

Web Certificates (requires WebConnector)

### **Peer Logic i500 Directory**

Directory Service Agent (DSA)

Enterprise Directory Entry

Web or VPN Certificate Directory Entry

### **Entrust/SecureControl**

Entrust/SecureControl User Entries

Entrust/SecureControl Server

Authorization Server

NOTE: The Entrust/Control Server it includes two authorization servers, however customers may require additional authorization servers.

### **Documentation**

Client User Guide

Entelligence Guide

Administration Guide

UNIX Installation Guide

NT Installation Guide

### **Entrust.Site Certificates**

1 Year Certificates

2 Year Certificates

### **Training**

End User Computer Based Training (CBT)

### **Professional Services**

Installation and Set-up

Network Design

Security Consulting

**ATTACHMENT E: ENTRUST PRICE LIST**

**ATTACHMENT F: DISCOUNTS**

**ATTACHMENT G: MAINTENANCE AND SUPPORT**

**NOTE:** Contact Mike McLaughlin / Entrust Technologies at (703) 269-2047 or [Mike.McLaughlin@entrust.com](mailto:Mike.McLaughlin@entrust.com) for more information pertaining to Prices, Discounts and Maintenance & Support.